

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ALLIED
INDUSTRIAL, AND SERVICE WORKERS
LOCAL 1-912 (TOLEDO REFINING COMPANY,
LLC)**

and

Case No. 08-CB-238577

JOHN BROWN, an Individual

Lerval Elva, Esq., for the General Counsel.
*Timothy Gallagher, Esq. (Schwarzwald McNair & Fusco,
LLP, Cleveland, Ohio,*) for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Bowling Green, Ohio on October 16, 2019. John Brown filed the initial charge in this matter on March 28, 2019. The General Counsel issued the complaint on July 24, 2019.

The General Counsel alleges that Respondent Union, Steelworkers Local 1-912, violated Section 8(b)(1)(A): by 1) threatening John Brown that his employer, Toledo Refining Company, could discipline him for criticizing the Union and 2) coercively harassing and/or intimidating John Brown.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

John Brown's employer, Toledo Refining Company, a Delaware corporation, operates an oil refinery in Oregon, Ohio, near Toledo. Toledo Refining Company sells, and ships goods valued in excess of \$50,000 directly to and directly from points outside of Ohio. Toledo Refining Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

John Brown has worked at Toledo Refining since 1981. He was a member of Respondent Union from 1983 until 2017. During that time he held a number of positions with the Union, including local president for several non-consecutive terms. Brown's last term as president was from 2014-2016. Brown resigned from the Union in July 2017 due to differences of opinion with other officials of the local.

The Union and Toledo Refining had a collective bargaining agreement that ran from 2014-February 8, 2019. Negotiations for a successor contract occurred in February and March 2019. The parties concluded a successor agreement running from February 2019-February 2022 after two ratification votes by unit members.

Complaint paragraph 7: Alleged violation by Joseph Sauerwein

John Brown disagreed with the way local union officials conducted the negotiations. On or about February 20, 2019 he distributed a leaflet at work which ridiculed aspects of the Union's strategy, G.C. Exh. 3. In one sentence he indicated that by voting against ratification of an employer proposal, unit members gained nothing except, "you get to tell the company [f]uck you."

On February 22, 2019, Brown distributed the following leaflet in the workplace, G.C. Exh. 4.

To the Union

You are selling your services to the membership. You should be trying to convince the employees of this facility that a Union membership is a commodity that they need. That a Union membership is absolutely necessary and is worth every hard-earned dollar that is used to pay dues. Your job is to convince individuals to purchase your product. You absolutely do not do this by:

Having an International Union that has lost thousands of dues paying members in the last decades and instead of cutting costs and staff, increases dues grossly and exorbitantly. And uses a share of the proceeds to flood hush money to the local union treasuries. Any decent entity would return excess funds to the pockets where the funds came from (the membership). Having an international Union that has no issue with telling falsehoods to the membership. (I.e. the dues increase for the strike fund is only temporary)

Having a local Union that:

Outright tells lies to the membership. (I can't tell you what the issues are because it is against the law)

We didn't turn down the national package, we just didn't accept it. What a terrible dunderhead, spoiled brat of a move. Screams loud and clear we have no interest in obtaining a fair and decent contract for our membership. Strictly a personnel agenda taking place.

Keeps the membership in the dark as to what the bargaining issues are under the guise that information would destroy bargaining strategy. What takes place in the dark, comes out in the light of day. (A.K.)

Informs the membership as to how great they did. And the membership should be very appreciative of them. If you really did well you wouldn't have to tell us how great you did. We would see from your body of work, no words necessary.

Put in a letter that you had to inform the company as to what an impasse in bargaining is (you didn't) and if in your mind you did, You did too good of a job. Because the company took this impasse and turned it sideways and shoved it up your ass.

Blames the membership for the lack of a successful and quality negotiations. (Dissension)

I don't care how you spin it, dissect it, or look at it. The membership did not let you down. You let the membership down.

To blame the membership for your character faults and weaknesses and lack of negotiating skills, clearly shows where negotiations went wrong. Look in the mirror.

Ron Rinna an ex Union President used to state over and over that the only power we wield as a union is our Integrity. Without integrity you have nothing.

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Dissension and agitation makes a Union stronger, not weaker. Weak leaders make a Union weaker, not stronger.

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When you wash clothes, it's not the detergent that gets the clothes clean, it's the agitation. It is the agitation that gets the dirt out.

This Union needs a ton of agitation.

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The light at the end of the tunnel is the fact that that we have numerous good young employees that know, right from wrong, fact from fiction, the value of telling the truth and integrity, and the value of putting others before yourself.

In solidarity - John Brown

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On March 1, 2019, the Union sent an email to all members about offensive and threatening language being used at the refinery, stating it did not condone such language. The email did not specifically mention Brown or his flyers., Jt. Exh. 1. Later that day, Joseph Sauerwein, Chairman of the Union's Human Rights Committee and a member of its Executive Board, and Keith Krygielski, a union steward and member of the Executive Board, went to Brown's work area to speak to him. Brown, who was attending a crew meeting, told them he was busy and refused to engage them in conversation, Tr. 30-31. According to the Sauerwein, the Union decided to do this in response to an anonymous letter sent to union and employer officials on February 26, 2019 complaining about Brown's leaflets, Union Exhibit 1.¹ This letter specifically complained, among other things, about the language in Brown's leaflets, specifically the phrase asserting that the company had shoved the impasse up the Union's ass.

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¹ The anonymous letter-writer made a number of assertions unsubstantiated on this record, for example, stating, without any personal knowledge, that Brown distributed the leaflets on work time, Union Exhibit 1.

Later that afternoon, Sauerwein sent Brown the following email. G.C. Exh. 5.

John,

The Civil and Human Rights Committee has received concerns from the membership regarding letters distributed recently.

Language in said letters could be considered offensive. The language in the letters could lead to company disciplinary involvement.

Due to the offensive nature and the disciplinary possibilities we want to advise you that is not advisable.

When we stopped in you[r] plant to counsel you on this matter you advised us you were busy at the time. This is an attempt to ensure you are aware of the situation.

On March 8, Brown emailed Deithra Glaze, a human resource representative of the employer, complaining about the Union's March 1 email, G.C. Exh. 6.² He copied Sauerwein and other union officials on this email.

Two weeks later, Glaze had Brown meet with company attorneys, who apparently were trying to determine whether Brown had violated the employer's rules of conduct. Glaze did not testify in this proceeding. Thus, the record does not indicate why the employer required Brown to meet with its lawyers. The employer did not discipline Brown.

Complaint paragraph 8: alleged violation by Joel Steingraber

During the second week of March 2019, Brown was working in the control room of plant 5 when a joint labor/management team performed a safety audit of his work area. Later in the day, Joel Steingraber, the union representative on the team, returned to the control room, walked over to where Brown was sitting and stood 2-3 feet from Brown's work station.³ Neither Brown nor Steingraber said anything. The evidence does not show that Steingraber made any threatening gestures. Moreover, the record does not reflect how long Steingraber stood there. The record does not support the General Counsel's contention at page 13 of its brief that Brown was unable to perform his work duties free from interference.

² In this email, Brown informed Glaze that Sauerwein and Krygielski interrupted a crew meeting conducted by supervisor John Lewis. Lewis did not testify, and I find there is no credible evidence that Sauerwein and Krygielski in any material way prevented Brown or anyone else from performing their duties.

³ I credit Brown's account of this incident over Steingraber's vague, hesitant and unconvincing denial.

ANALYSIS

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Section 7.

In *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2000), the Board clarified the scope of Section 8(b)(1)(A) by finding that internal union discipline may give rise to a violation only if the union's conduct: (1) affects the employment relationship, (2) impairs access to the Board's processes, (3) pertains to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or (4) otherwise impairs policies imbedded in the Act. *Id.* at 1418, 1424. If the union's discipline is found to be within the scope of Section 8(b)(1)(A), the Board then weighs the Section 7 rights of the union member against the legitimate interests of the union to determine whether the discipline violates the Act. See *Service Employees Local 254 (Brandeis University)*, 332 NLRB 1118, 1122 (2000) (determining whether a violation of Section 8(b)(1)(A) occurred involves balancing the employees' Section 7 rights against the legitimacy of the union interest at issue).

Thus, the issue herein is whether Board precedent precludes finding a violation of Section 8(b)(1)(A) given the facts in this case. The facts herein do not fit into any of the 4 exceptions set forth in *Sandia*. Neither the Union's email nor Steingraber's hovering affected Brown's employment with Toledo Refining. Neither impaired Brown's access to the Board's processes. To the extent the email and Steingraber's conduct was coercive, they do not rise to level encompassed by exception 3 and notably did not involve either an organizing drive or a strike.⁴ Finally, unless exception 4 swallows the general rule, I find the Union's conduct herein does not otherwise impair the policies imbedded in the Act.

John Brown had a protected right to publicly protest the Union's bargaining strategy. I doubt seriously that he forfeited this right by the language he used in his flyers. I also conclude that the email the Union sent him would tend to restrain an employee from protesting the Union's conduct—at least in the manner and with the colorful language employed by Brown. However, I find that such restraint does not impair policies imbedded in the Act.⁵

⁴ Given the paucity of evidence regarding their encounter, I decline to conclude that Steingraber's conduct vis-à-vis Brown amounted to a threat of violence. Neither Sauerwein's visit to Brown, nor his email fit into category 3 either.

⁵ I do not find that the General Counsel has established that Steingraber restrained or coerced Brown in the exercise of his Section 7 rights by standing over him for an unspecified period of time—without saying a word.

The General Counsel argues that Office Employees Local 251 (Sandia) is inapplicable to this case because it is limited to cases involving internal union discipline, G.C. brief at 11. I conclude that *Sandia* is not so limited and thus dismiss the complaint.

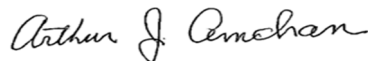
5 The Board in *Sandia* specifically overruled its decisions in several prior cases in which it had found Section 8(b)(1)(A) violations for union conduct other than Union discipline. Among these was *Teamsters Local 579 (Janesville Auto Transport)*, 310 NLRB 975 (1993) [Union removed members from a mailing list pertaining to noncontractual benefit programs] and *Laborers Local 324, (AGC of California)*, 318 NLRB 589 (1995) [Union
10 rule prohibiting distribution of dissident literature in union's office]. The Board noted that Congress provided a remedy for purely intramural union quarrels under the Labor-Management Reporting and Disclosure Act (LMRDA).

In summary, finding no connection between the Union's conduct and Brown's relationship with Toledo Refining, I dismiss the complaint in alleging a violation of
15 Section 8(b)(1)(A).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶ order

The complaint is dismissed.

Dated, Washington, D.C. December 9, 2019

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Arthur J. Amchan
Administrative Law Judge

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⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.